

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF ADMINISTRATION

In the Matter of the Appeal of the
Determination of the Responsible
Authority for the City of La Crescent
that Certain Data Concerning Keith
Garrett are Accurate and/or Complete.

**RECOMMENDED ORDER
FOR SUMMARY DISPOSITION**

By a written Motion filed on May 17, 1996, the City of La Crescent seeks a Recommendation for Summary Disposition in this matter. The Petitioner, Keith W. Garrett, filed a reply on May 23, 1996. Each party filed subsequent memoranda, the last of which was filed on June 18, 1996.

William Von Arx, City Attorney for the City of La Crescent, 274 South Kingston Street, P.O. Box 229, Caledonia, Minnesota 55921, and Kent Sulem, Esq., League of Minnesota Cities, 145 University Avenue West, St. Paul, Minnesota 55103-2044, represented the City of La Crescent. Keith W. Garrett, 514 McIntosh Road, La Crescent, Minnesota 55947, represented himself.

Based upon the submissions by the parties and all of the filings in this case and for the reasons set out in the memorandum which follows,

IT IS HEREBY RECOMMENDED that the Commissioner of Administration issue an Order (1) directing the City of La Crescent to modify its minutes of the City Council meeting of June 20, 1994, to conform to Exhibit A attached to this Order, and (2) directing the City of La Crescent to promptly publish Exhibit A in its legal newspaper.

Dated this 25th day of June, 1996.

GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

This case involves a challenge to the accuracy and completeness of a portion of the minutes of a City Council meeting in La Crescent, Minnesota on June 20, 1994. The portion of the meeting in question was a public hearing on a park and recreation plan for the City. Mr. Garrett, who spoke at the meeting, challenges the accuracy of his remarks as set out in the minutes as well as the omission of other comments from the minutes which provide a context for his comments. Minn. Stat. § 13.04, subd. 4, provides that an individual may contest the accuracy or completeness of public data concerning himself and may appeal the determination of the responsible authority in this regard under the provisions of the Administrative Procedure Act, Ch. 14 of Minnesota Statutes. Under the statute, contests are limited to data concerning individuals. Accordingly, data other than the petitioner's comments is appropriately considered only insofar as it impacts upon the petitioner's comments. See, *Order* dated May 2, 1996. The Commissioner of Administration has adopted rules which define accuracy and completeness. Under Minn. Rule 1205.1500, subp. 2A "accurate" means that the data in question is reasonably correct and free from error. Under subp. 2B. of the rule, "Complete" means that the data in question reasonably reflects the history of an individual's transactions with that particular entity and omissions in an individual's history that place the individual in a false light are not permitted.

The City has filed a motion for summary judgment which seeks an order approving certain modifications to its minutes. The administrative equivalent of summary judgment is summary disposition. Under Minn. Rule pt. 1400.5500(K) summary disposition is appropriate when there is no genuine issue of material fact and one party is entitled to judgment as a matter of law. A genuine issue is one which is not sham or frivolous and a material fact is one which will affect the outcome of the case. *Highland Chateau vs. Minnesota Department of Public Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1988) *rev. den.* (Minn. Feb. 6, 1985). The nonmoving party may not rest upon mere denials, but must present specific facts showing that there is a genuine issue for trial. If the nonmoving party fails to rebut specific facts presented in the motion, no question of material fact may exist and summary judgment will be appropriate. *Carlisle vs. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. Ct. App. 1988). Affidavits are a proper means of presenting facts in support of or opposing motion for summary judgment. *Kessel vs. Kessel*, 370 N.W.2d 889, 894 (Minn. Ct. App. 1985).

The City's motion seeks a recommended order which would authorize an addendum to the minutes of the City Council's public hearing of June 20, 1994. In his response to the Bill of Particulars filed earlier by the City, the Petitioner cited four items which he believes need to be corrected in the minutes of the City Council meeting in order to make them accurate and complete. The first was that the paraphrase of the Petitioner's statement at the hearing should read, " . . . If we continue along this path, we should be able to come to a conclusion" He also asked that the City's attorney's discussion on due care, the special duty doctrine, the case of *Craycraft vs. City of St. Louis Park*, punitive damages, indemnification and misconduct, be reflected

in the minutes. The City has agreed to make both of these changes in its proposed addendum.

Mr. Garrett also requested that two other items be changed to which the City has not agreed. First, he asks that the minutes be amended to indicate that consultant Mark Koegler stated that he had not determined safe access for Harris (Eagles) Park. The City argues that the tape recording of the hearing indicates that Mr. Koegler never made this exact statement. The City has no objection to language summarizing Mr. Koegler's actual comments. Secondly, the Petitioner asks that the minutes indicate that council member Frank Kistler's motion to accept the Park and Recreation Plan was conditioned upon the determination of safe access for Harris (Eagles) Park. The City argues that the tape recording indicates that Mr. Kistler did not condition his motion upon a determination of safe access for Harris (Eagles) Park, but rather that Mr. Kistler stated, as a part of his motion, the condition that the council stay on the path of adopting, as time and money permits, "any and all aspects of safety in our City parks."

Prior to submission of the motion for summary judgment, the parties agreed that even though they disagreed on what was said at the public hearing on the Park and Recreation Plan, and what therefore ought to be included in the minutes, the Administrative Law Judge could decide the matter based upon a review of the City's tape recording of the hearing without the necessity of taking any testimony at a hearing. With the resolution of what was said at the hearing, as reflected on the tape, there are no further factual conflicts and this matter is properly resolved by applying the law and is therefore appropriate for summary disposition. However, upon receiving a copy of the tape recording of the June 20, 1994 hearing, Mr. Garrett has argued that the tape recording has been tampered with by deleting some material and adding other material, at some point after the hearing. Accordingly, Mr. Garrett sought to have a copy made of the original tapes in possession of the Administrative Law Judge. This was done and sent to Mr. Garrett on June 10, 1996.

Mr. Garrett also sought to have an analysis by a professional sound engineer of the tapes included in the record. By letter dated June 10, 1996, the Administrative Law Judge advised the Petitioner that after a review of both the original tapes and the copy, there was not sufficient justification to order an analysis of the tapes by a sound engineer. The reasons for that conclusion are set out in the letter of June 10, 1996. After several careful reviews of the tape recording by the ALJ, it simply does not appear likely that the tape was altered in the manner suggested by the Petitioner. The integrity of the tapes is supported by an affidavit of the City Clerk who states that the original tapes are true, accurate, complete and unaltered. The Petitioner argues that her affidavit should not be considered. It is not necessary to consider the affidavit in order to resolve this matter since a review of the tape by the ALJ was agreed upon by the parties as the appropriate resolution of any factual disputes.

In his final submissions, Mr. Garrett again argues that his analysis of the professionally copied tapes of the hearing indicates that the original tapes were modified after the hearing. He submitted a "computer enhanced" copy of a portion of

the tape to support his argument. After reviewing this tape, the Administrative Law Judge remains unconvinced that there is sufficient reason to continue discovery or to reopen this matter for a hearing. Mr. Garrett argues that he should have the opportunity to submit rebuttal evidence, presumably a professional analysis of the tapes. However, that portion of Minn. Stat. § 14.60, subd. 3, cited accords parties the right to submit rebuttal evidence at a hearing. In his June 18, 1996 letter, Mr. Garrett acknowledges that his only condition for agreeing to cancel the hearing in this matter was submission of the original tapes to the ALJ and Mr. Garrett's receipt of a copy. Those conditions were met and there is not sufficient justification to rescind that agreement.

Based upon a review of the full record in this matter as well as the tape recording submitted for review, it is concluded that Mr. Garrett is correct in asking that a paraphrase of his statement be corrected and in asking that the City Attorney's lengthy discussion be summarized in the minutes. Both of these suggestions, to which the City has agreed, render the minutes more complete and more accurate. Additionally, the Petitioner is correct in arguing that the minutes as originally adopted and published failed to convey the context of the discussion, namely that most of the statements and testimony at the hearing were generated by and related to the issue of safe access at Harris (Eagles) Park. Although the council was considering a general park and recreation plan for the entire City, it would be inaccurate to fail to include information which made it clear that the discussion related specifically to Harris Park and that Mr. Garrett's comment followed significant discussion devoted to the question of access at Harris Park.

Accordingly, changes are recommended to the council minutes as set out in Exhibit A attached (with the changes indicated in Exhibit B), which indicate that council member Kistler asked Mr. Koegler to respond to a list of concerns received by the City Council and that Mr. Koegler's acknowledged that those concerns centered around the issue of safe access to Harris Park. The proposed addition also indicates that the City Attorney's comments were related to safety concerns in a public park. The proposed addition includes recognition that Mr. Koegler again commented on the issue of safe access for Harris Park after the City Attorney's presentation. In short, there was significant discussion of safe access for Harris Park and the minutes must reflect this in order to be considered accurate and complete.

However, the Administrative Law Judge's review of the record does not indicate that at any time Mr. Koegler specifically stated that he had not determined safe access for Harris Park. Rather, he was careful to explain that the plan being proposed was a detailed design plan and that issues such as access would have to be addressed in the future when the park was developed. He stated that safety concerns were not addressed in the plan to the degree that they would be in the traffic engineering context. He was saying that safe access had not yet been fully addressed. Additionally, a review of the tape indicates that council member Kistler did not specifically condition his motion upon a determination of safe access for Harris Park, but rather that he conditioned it upon the council staying on the path of adopting, as time and money permits, "any and all aspects of safety in City parks." Exhibits A and B,

attached, contain new language to reflect more clearly that this concept was a part of his original motion.

Mr. Garrett's recollection of the meeting is that Mr. Kistler's motion was made during the public hearing prior to Mr. Garrett's comment, that it was then noted that Mr. Kistler's motion was improper procedure and that he restated it after the public hearing was closed. The tape does indicate that Mr. Kistler may have started to make his motion prior to the close of public testimony, but after Mr. Garrett's statement. The Mayor apparently interrupted him to close the public comment portion of the hearing and Mr. Kistler then proceeded to make his motion. However, there is nothing on the tape to support Mr. Garrett's recollection that his statement followed the motion by Mr. Kistler.

The changes proposed in the attached Exhibits render the document more accurate and complete as contemplated by Minn. Stat. § 13.04, subd. 4. They also more reasonably reflect Mr. Garrett's transactions with the City within the meaning of Minn. Rule 1205.1500, subp. 2B. As originally written, the City Council minutes did not indicate what Mr. Garrett was responding to in making his comments. As a result, it appeared as though Mr. Garrett was satisfied with the adoption of a general plan for the parks without consideration of Harris Park in particular. That was not the case and the additions and deletions correct that impression.

Given all of the argument about the integrity of the tapes, it is easy to lose sight of the purpose of this proceeding, namely, to determine if data about Mr. Garrett is accurate and complete. Even if the tapes were modified, it is unlikely that lost testimony at the hearing could be recovered at this point. And even if it could be somehow proved that Mr. Kistler made an initial motion specifically contingent upon safe access to Harris Park, it is clear that the motion that passed did not include this language. It is also true that while the statements which Mr. Garrett believes were deleted might provide further context for his remarks, the changes that are proposed in Exhibit A leave little doubt as to what Mr. Garrett was commenting about. Given the nature and significance of the issues involved, further discovery is unwarranted and the minutes as amended are reasonably correct and free from error within the meaning of Minn. Rule 1205.1500, subp. 2A.

G.A.B.